IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6348 of 2002

For Approval and Signature: sd/-

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DECD.VIRABHAI BHAIJIBHAI

Versus

GANGABEN WD/O VITTHALBHAI LALLUBHAI PATEL DECD.BY HEIRS

Appearance:

1. Special Civil Application No. 6348 of 2002

MR HM PARIKH for Petitioner No. 1-1/3/3

..... for Respondent No. 1,1/2

MR UM SHASTRI for Respondent No. 1/1,1/3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 22/07/2002

ORAL JUDGEMENT

Rule. Mr.Trilok J.Patel, learned Advocate waives service of Rule on behalf of the respondents.

1. This petition has a long chequered history of nearly 40 years. It is a second round of litigation between the parties. In first round the parties fought

right upto this Court and respondents succeeded in 1988. Inspite of it they were at square one because of the illegal order passed by the Mamlatdar and ALT which was confirmed in Appeal by the Deputy Collector. However, fortunately the Gujarat Revenue Tribunal (for short "Tribunal") ultimately done justice to the respondents by reversing the impugned orders passed by the Mamlatdar & ALT and the Deputy Collector at Annexures : A & B respectively by allowing the Revision Application filed by the present respondents and directed that the possession of the disputed land be handed over to the legal heirs and representatives (LRs.) of the landlord. The learned Tribunal passed the impugned order at Annexure : C way back on 15.1.2001. The same was challenged by the present petitioners by way of this petition which was filed on 18.4.2001, as stated at the bar by Shri Parikh. It seems that this petition was initially dismissed for default which was restored to the file on the Miscellaneous Civil Application filed by the present petitioners. However, till today the petitioners have retained the possession of the land with them. Be that as it may.

2. There is dispute regarding the land bearing Survey No.489 admeasuring 1 (Acre) - 31 (Gunthas) at Lakhavadi Pati, Nadiad. It had two landlords, viz. Ambalal Lallubhai and Vitthalbhai Lallubhai, the tenant was Virajibhai Bhaijibhai, whose legal heirs have filed this petition under Article 226/227 of the Constitution of India.

3. It is not in dispute that the landlords had obtained the Certificate u/s.88(C) of the Bombay Tenancy Act and consequently they were certified landlords. They have filed case No.235 of 1962 u/s.32 of the Bombay Tenancy Act, wherein the Mamlatdar & ALT by his order dated 22.12.1964 awarded the possession of half of the land of the said Survey number to them. Thereupon, being aggrieved by the said order both, the landlords as well as tenants, preferred Appeals No.48 of 1964 and 41 of 1965 respectively before the Deputy Collector. However, both the Appeals were dismissed by a common order dated 6.11.1965. Aggrieved by this order the landlords filed Revision Application No.121 of 1966 before the Gujarat Revenue Tribunal which was also dismissed on 10.10.1967 by the Tribunal. During the pendency and final disposal of that Revision one of the landlords i.e. Ambalal Lallubhai expired on 10.2.1966 without leaving any heirs. However, remaining sole landlord Vitthalbhai Lallubhai applied for possession of the said land on 20.1.1976. However, his case was dismissed for default as he was

absent at the time of hearing of his case. Thereupon, he again applied on 6.2.1978 for possession. Unfortunately, when the application was pending the second landlord Vitthalbhai Lallubhai also expired on 20.6.1978, therefore, his legal heirs have come on record in his place. Thereafter the learned Mamlatdar and ALT by his order dated 10.9.1979 ordered for handing over possession of the said land to the LRs of the landlords. By that time the original tenant also died. Therefore, his LRs challenged the said order in Tenancy Appeal No.597/81 which was dismissed by the learned Deputy Collector by his order dated 25.1.1982. Against the aforesaid order Revision Application was filed by the LRs. of the tenant before the Tribunal, but the same was also dismissed on 22.7.1982, as the learned Tribunal was of the opinion that the order passed by the Mamlatdar awarding possession to the successor of the landlord was under the Mamlatdar's Court Act, 1906 over which Appeal or revision would not lie to the Tribunal and they had to approach the Deputy Collector. On the basis of the said judgment of the learned Tribunal they have unsuccessfully approached the Deputy Collector by way of Revision Application No.57 of 1983. The learned Dy. Collector decided the said Revision Application against which the petitioners - tenant approached this Court by filing Civil Revision Application No.446 of 1986. But, the said Revision Application was dismissed by this Court on 8.2.1988. This was the end of first round of litigation between the parties.

4. However, it seems that the present petitioners, who are the Legal representatives of the tenant never wanted to part with the possession to the Legal representatives of the original landlords. Therefore, they filed Application before the Mamlatdar & ALT on 8.8.1989 for declaring them as occupants of remaining 35-1/2 Gunthas of land which was awarded to the landlord on the ground that the landlord failed to take possession of half of the amount awarded to them by the Mamlatdar. Therefore, the submission was made that both, the landlord had passed away before taking possession of half of the land, therefore, now the question of giving possession of land to the legal representatives would not arise. Surprisingly, the Mamlatdar & ALT found favour with such submission made by the LRs of the tenant and he came to the conclusion that as the certified landlords died during the pendency of the litigation between the parties therefore their legal representatives could not be entitled to get the land on the basis of certificate issued to the original landlord u/s.88(C), as the original tenants was deemed purchaser as on 1.4.1962

u/s.32(4) of the Act. Accordingly, the learned Mamlatdar & ALT by his order dated 13.1.1992 ordered to give occupancy right to the legal heirs and representatives of the original tenant on payment of purchase price u/s.32(G)(4) of the Act. This impugned order passed by the learned Mamlatdar & ALT was unsuccessfully challenged by the LRs of the landlord in tenancy Appeal No.537 of 1992. Aggrieved by both the orders passed by the Mamlatdar & ALT as well as the Deputy Collector in Appeal, the LRs of the landlords challenged it in Tenancy Revision Petition No.750 of 1993 before the learned Tribunal. The learned tribunal by its impugned judgment and order dated 15.1.2001 allowed the said Revision petition and quashed and set aside the impugned orders passed by the Mamlatdar & ALT and the Deputy Collector in Appeal and directed the possession of the disputed land admeasuring 35-1/2 gunthas of Survey No.489 be handed over to the LRs. of the landlord. This decision has been challenged by the petitioners the LRS. of the original tenant in this petition which is filed under Articles 226/227 of the Constitution of India. Strictly speaking it is a petition under Article 227 of the Constitution of India.

5. Learned Counsel Shri Parikh, appearing for the petitioners - LRs. of the original tenant, vehemently submitted that the learned Tribunal has completely failed to consider the question of limitation. He submitted that though the earlier order was passed in favour of the landlord way back in 1966, for 20 years they failed to take possession of the land. Therefore, they had lost all the rights to get back the possession of the land from the LRs. of the tenant. This submission of Shri Parikh has no substance. Therefore, it has to be rejected. I have already narrated the chequered history of the matter between the parties which shows that at any cost initially the tenant and thereafter his Lrs. were adamant not to part with the share of the landlords and their legal representatives. They just go on filing litigation after litigation from one Court to other Court. In fact when the controversy between the parties were set at rest by this Court in Civil Revision Application No.446 of 1986 by dismissing the same on 8.2.1988, and the petitioners should have handed over possession of half of the land in question to the respondents. However, they have resorted to another frivolous litigation by approaching the Mamlatdar & ALT on 8.8.1989 and unfortunately without understanding the provisions of the Act the Mamlatdar & ALT decided that in their favour and denied the right to them only on the ground that they were representatives of the certified

landlord. The same mistake was committed by the Deputy Collector while dismissing their Appeal. It is fortunate that the learned Tribunal took the correct view of the matter and set aside both the orders passed by the Mamlatdar & ALT and the Deputy Collector.

6. Learned Counsel Shri Parikh for the petitioners submitted that the Tribunal has not considered the provision of Section 88(C) of the Tenancy Act. According to Shri Parikh for obtaining possession of the land certificate issued in the name of the deceased landlord in 1964, therefore, his LRs can not claim any right. According to the submission of Shri Parikh the right accrued to the original landlord goes with the death of the landlord. I am afraid, this submission of Shri Parikh cannot be accepted. However, Shri Parikh, learned Counsel for the petitioners tried to rely upon the Judgment of the Division Bench of the Mumbai High Court, in the case of HARIBA KESHAV BARBOLE V/S. SMT. MOTIBAI DEEPCHAND, reported in 1978 BLR 595. The Division Bench of Mumbai High Court had relied upon its previous judgment reported in 1966 BLR in the case of PARVATIBAI RAMCHANDRA ROKADE V/S MAHADU TUKARAM VARKHEDE. Having carefully gone through the aforesaid judgment I am of the considered opinion that none of the aforesaid judgments will have any application to the facts of the present case which I have reproduced earlier in detail.

7. Shri Parikh, learned Counsel for the petitioner rightly submitted that there is so far no judgment of this Court on this point regarding the right of LRs. on the death of deceased landlord. However, I am of the considered opinion that merely because the litigation continued between the parties that does not mean that the right of the LRs. of the deceased landlord would abate. Under Section 88(C) of the Tenancy Act the right of the LRs. of the deceased landlord would continue irrespective of their income. Once the landlords are certified then whatever right they had, their LRs would derived such right on their death irrespective of any other fact.

8. In view of the above discussion, this petition fails and is hereby dismissed with costs. Rule discharged.

9. At this stage a request is made by Shri Parikh for the petitioner not to dispossess the petitioner from the land in question for a period of 6 weeks. Such request can not be granted because though the Tribunal allowed the Revision way back in January, 2001, and

though there is no interim order passed in this petition in favour of the petitioners, they illegally continued to remain in possession of the 1/2 share of the landlord till today. In my considered opinion the petitioners have no right to retain the possession of the land which belongs to the respondents. Hence, this request is rejected.

sd/-

Date : July 22, 2002 (B.J.Shethna, J.)

sas